CURRICULUM VITAE

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Experience:

PROFESSIONAL

Advocate Supreme Court (enrolled by Supreme Court on 20 July 2008 and Lahore High Court on 26 May 1996). Areas of specialisation are international tax, drug laws, corporate matters, press, intellectual property, human rights and constitutional law.

Editor-in-Chief, *Taxation, Weekly Tax Journal*, Pakistan's first tax E-journal

[available at www.aacp.com.pk, and also compiled and printed on monthly basis under the name of *Tax Review*.

Member Visiting Faculty, Lahore University of Management Sciences (LUMS), Punjab University Law College and Directorate General (Training & Research) of Direct Taxes.

Correspondent & Review Editor of various publications of International Bureau of Fiscal Documentation (IBFD; www.ibfd.org), Amsterdam, The Netherlands.

Member International Fiscal Association (IFA**;** www.ifa.nl**)**, World Trade Centre, P.O. Box 30215, 3001 DE Rotterdam, The Netherlands.

Member Advisory Committee of Federal Tax Ombudsman of Pakistan.

Member Consumers' Right Committee, Lahore High Court Bar Association, Lahore, Pakistan.

Ex-Member, Civil Services of Pakistan: Associated with Civil Services of Pakistan [Income Tax Group] from October 1984 to April 1996. Tendered resignation in September 1995 and established own tax firm in April 1996.

ACADEMICS

Doctor of Laws (International Tax, Transfer Pricing)
Masters (English literature and linguistics)

LLB (Jurisprudence, International law)

Graduation (English Literature, Philosophy)

TEACHING

Principal instructor of tax laws at the Lahore University of Management Sciences (LUMS), Punjab University Law College, Lahore, Institute of Tax Education (LITE) and Directorate General (Training & Research) of Direct Taxes, a Government-run institute for the training of higher officers of Income Tax Department. Services in the field of research and teaching have been recognized at the national and international level. In 1994 and 1995, the President of Pakistan awarded Meritorious Services Awards.

Guest Speaker at National Defence University, Islamabad and at various national and international forums. I have attended numerous conferences all over the world on the issues of taxes, narcotics legislation, human

rights and various other aspects of law as guest speaker.

JOURNALISTIC

Five years working experience as full time journalist. From 1979 to 1984, worked as reporter, sub-editor, feature writer, editorial writer and Assistant Editor with *Viewpoint, Dawn, The Muslim* and *The Frontier Post*. I have been contributing articles and special features on a variety of topics including Education, Economics, Tax, History, Culture, Politics and International Relations to the leading newspapers and magazines of international repute.

Specialisation is in the field of international taxes and narcotics legislation: A number of investigative reports on the world narcotics trade have been published and quoted internationally. A book on the subject, *Pakistan: From Hash to Heroin,* published in 1991, was well received in Pakistan and abroad. Its sequel *Pakistan: Drug-trap to Debt-trap*, published in June 2003, has earned international recognition being a well-research work on Pakistan's journey from 'Kingdom of Heroin' to 'powerless nuclear State'. See reviews on the book:

DAWN (November 9, 2003)
http://66.201.122.226/weekly/books/archive/031109/books9.htm]

The Nation (October 24, 2003]
[http://www.nation.com.pk/daily/nationplus/oct-2003/24/page5.htm]

Over 500 articles, papers, columns, features and reports have been published in Pakistan and abroad. Some of these are widely quoted in books and international press. *Asian Survey*, world-renowned magazine of University of California, Berkeley, USA, published research papers. International Bureau of Fiscal Documentation (IBFD) and European Union also published articles/papers in their journals.

ADMINISTRATIVE

After qualifying Central Superior Services Examination in 1983, served for 12 years (1984-1996) in the Income Tax Department, Federal Board of Revenue, Ministry of Finance, Government of Pakistan, as taxation officer, administrator and instructor. I received specialized training at the prestigious Direct Tax Institute, Lahore, in public finance, taxation, financial investigation, industry, trade, accountancy, tax laws and business affairs. I also received one-year training at the esteemed Civil Services Academy of Pakistan in multiple disciplines, including economics, international affairs, history and public administration.

REPORTED CASES:

(i) ***Prime Commercial Bank Ltd*** **v** ***ACIT*** **[1997] 75 Tax 1 (H.C. Lah)=1997 PTD 605**

Writ decided in favour confirming that section 50(2B) of the Income Tax Ordinance, 1979 as amended before 1996 does not cove 'call deposit receipts" and that this entire sub-section applies only where funds are transferred from one person to another.

(ii) ***Union Bank Ltd*** **v** ***Federation of Pakistan*** **[1998] 77 Tax 125 (H.C. Lah)**

Writ decided in favour confirming that section 14D of the Wealth Tax act 1963 does not apply to banking companies.

(iii) ***Union Bank Ltd*** **v** ***Federation of Pakistan*** **[1998] 77 Tax 127 (H.C. Lah)**

Writ decided in favour confirming that Circular No. 13 of 1997 issued by CBR is ultra vires and that banking companies would pay advance tax u/s 53 of the Income Tax Ordinance, 1979 after taking into account tax already deducted u/s 50(2) on government securities.

(iv) ***Kawther Grain (Pvt) Ltd*** **v** ***DCIT*** **[1999] 80 Tax 262 (H.C. Lah) = 1999 PTD 4028 (H.C. Lah).**

Writ decided in favour confirming that expression "goods" as used in section 50(4) of the Income Tax Ordinance, 1979 does not cover immovable property and that writ petition is maintainable where action by a tax authority is *coram non judice* notwithstanding availability of alternate remedy.

(v) ***Bank of Punjab*** **v** ***Federation of Pakistan*** **[2000] 81 Tax 390 (H.C. Lah)**

Writ decided in favour confirming that order passed u/s 53 by the Deputy Commissioner of Income Tax is void *ab initio,* as law does not allow him to do so and that High Court is competent to entertain a writ petition where interpretation of law is involved.

(vi) **[1999] 79 Tax 273 (Trib = 1999 PTD 2294**

The Income Tax Tribunal, Karachi on appeal by Habib Bank Limited decided the issue of limitation u/s 66A in favour and taxation of mark up/interest on accrual basis on non-performing loans against relying on its earlier judgement [1998] 77 Tax 273, but later on the said judgement was reversed by the honourable Sindh High Court in ITA No.s 279 to 281 of 1999 on my representation.

(vii) ***Abdul Hayee*** **v** ***Federation etc*** **[Vol. 6, No. 3 TAX FORUM 35]**

Writ decided in favour of employees by the honourable Lahore High Court declaring amendment made in Income Tax Rules, 1982 vide SRO No. 546(I) dated 1.7.1996 as violative of Article 25 of the Constitution of Pakistan. Through the said Statutory Regulatory Order (SRO), Rule 3(1A) and Rule 18A were inserted in Income Tax Rules, 1982 increasing the tax liability of persons employed by corporate sector vis-à-vis other employees of non-corporate sector. The said amendments were challenged being violative of the Constitution inasmuch as they are discriminatory. The honourable High Court held that CBR violated the law of land by creating discrimination in taxing allowances and perquisites of corporate and non-corporate employees in different manners.

(viii) **[2002] 85 Tax 245 (Trib)**
The ITAT accepted appeal on all the major points, like taxation of mark-up on non-performing loans on receipt basis, allowability of provisions of bad debt in the case of banks etc, except claim of diminution of value of investment on notional basis.

(ix) **2002 PTD (Trib.) 1898= (2002) 86 TAX 182(Trib.)**
The ITAT accepted appeal on the issue of Provision for bad debts, interest credited to suspense account and credit of deduction of tax at source till 30th June. The appeal on point of taxation of interest on securities on receipt basis and no application of section 24(i) failed.

(x) **(2002) 86 TAX 196(Trib.)**
The ITAT rejected the reference application filed by the Tax Department on the strength of my arguments that it is devoid of any merit. The learned Members of ITAT appreciated my point of view and remarked: "the arguments of the learned AR are quite relevant and impressive".

(xi) **(2003) 87 TAX 148 (Trib.) = 2003 PTD (Trib) 1146**
The ITAT accepted appeal and vacated the order passed by the IAC u/s 66A holding that he failed to prove that taxation of income from government securities on receipt basis as per bona fide method of accounting was prejudicial to the interest of revenue.

(xii) ***Saitax Spinning Mills Ltd* v *Commissioner of Income Tax* [2003] 87 Tax 156(H.C. Lah.) = 2003 PTD 808 [Lahore High Court]**
Appeal decided in favour as the honourable Lahore High Court held that action u/s 65 was illegal for want of "definite information". The Court held that mere reference to a declared value by another taxpayer is not by itself definite information to become a sufficient ground to re-open a completed assessment. The idea of sanctity of a completed assessment is certainly averse to the reopening based upon conjectures and surmises.

(xiii) ***Bank Al-Habib Limited*** **v** ***Central Board of Revenue*** **[2004] 90 Tax 9 (H.C. Lah.) = 2004 PTD 2294 [Lahore High Court]**

Writ allowed and the decision of the Central Board of Revenue of not approving special reserve of the bank was held unlawful being violative of Article 25 of the Constitution of Pakistan.

(xiv) **2005 PTD (Trib.) 474 = PTCL 2004 CL 461**

Appeal allowed ordering the deletion of addition of Rs. 26,260,445 under Rule 5(c) of the Fourth Schedule to the Income Tax Ordinance, 1979 on the plea that since Insurance Act 2000 repealed the 1938 Insurance Act, any reference to the repealed Act would be construed as reference to new Act in view of section 8 of General Clauses act of 1897. The ITAT confirmed the view that with effect from assessment year 2000-01 that reference of Insurance Act 1938 in Rule 5(c) of the Fourth Schedule to the Income Tax Ordinance will be construed to be that of Insurance Act 2000 as per section 8 of the General Clauses Act 1897.

(xv) ***Commissioner of Income Tax/Wealth Tax, Companies Zone III, Lahore*** **v** ***Muslim Insurance Co. Ltd. Lahore*** **2004 PTD 2707 [Lahore High Court] = [2004] 90 Tax 266 (H.C. Lah.)**

Case decided in favour as the honourable High Court dismissed all four department appeals in view of ratio settled by apex court in PLD 1997 SC 700=1997 PTD 1693 holding that computation of income profits and gains from insurance business and tax payable thereon were two different concepts altogether. It is reaffirmed that for the year under review benefit of reduced rate on dividend income cannot be denied to insurance companies.

(xvi) **[2005] 91 Tax 484 (Trib.) = 2006 PTD (Trib.) 356**

In the case of Muslim Commercial Bank Ltd, the Tribunal adjudicated all the issues in the favour of the bank except diminution in the investment which was held not an allowable expenditure on accrual basis.

(xvii) **[2005] 91 Tax 517 (Trib.) = 2006 PTD (Trib.) 288**

In the case of Kohinoor Energy Limited, the Tribunal allowed appeals on many issues and major relief secured in respect of allowability of expenses against interest income. The Tribunal also ordered adjustment of depreciation allowance against interest income and deleted additional tax u/s 88 and ordered passed u/s 52/86. The taxation of interest income upheld holding that exemption available to

the company is only in respect of sale of electricity. The issue of application of section 12(9A) was remanded back.

(xviii) **2005 PTD (Trib) 2041 = (2006) 93 TAX 80 (Trib.)**

In the case of Soneri Bank Ltd, the Tribunal allowed appeals on all the major issues and rejected departmental appeals. For this first time in any case, the Tribunal accepted that in case of concessionary loans given to employees, section 24(i) of the Income Tax ordinance, 1979 [parallel to section 21(k) of the Income Tax Ordinance, 2001] does not apply as no expenditure in incurred and claimed for this amount by the employer. It declared earlier judgement to the contrary in Hong Kong Shanghais Bank as per incuriam.

(xix) **2005 PTD (Trib) 2161 = (2005) 92 TAX 128 (Trib.)**

The Full bench accepted the plea that Tax Department cannot disallow expenses between exempt capital gains and taxable income on prorate basis, and that it is duty bound to ascertain actual expenses, if any, to be disallowed relatable to exempt income.

(xx) **[2005] 92 Tax 162 (Trib.) = 2006 PTD (Trib.) 1800 = 2005 PTR 151 (Trib.)**

The ITAT accepted all the appeals by the appellant except those related to excess perquisites and concessional loans. All the departmental appeals dismissed, except on the issue of bad debts where the Tribunal remanded the case with specific instructions to the assessing officer "for its reappraisal strictly in accordance with express statutory stipulation/judgement of Karachi High Court (1976) 34 TAX 158 (H.C.Kar.)".

(xxi) **[2005] PTR 123 (Trib.) = 2006 PTD (Trib.) 1292**

The ITAT accepted the well-established rule of judicial propriety that when a matter is pending before a High Court, the lower forums should not pre-empt the jurisdiction by passing a contrary order. The ITAT rejected the plea of the Department that in the light of (2005) 92 TAX 162 (Trib.) = 2005 PTR 151 (Trib.) a larger or full bench should be constituted. The Tribunal followed its earlier decision on the issue of provisions of bad debt and also declared addition u/s 24(i) as unlawful.

(xxii) ***Messers AES Pak Gen (Pvt) Company Lahore*** **v** ***Income Tax Tribunal Lahore*** **2006 PTD 1 [Lahore High Court] = (2006) 93 TAX 159 (H.C Lah.)**

The honourable High Court decided the matter in favour of the Income Tax Department holding that under clause (176), Part I, Second

Schedule to the income Tax Ordinance, 1979 interest earned on deposits is not exempt.

(xxiii) ***Messers Prosperity Weaving Mills Ltd*** **v Federation of Pakistan 2006 PTD 402 [Lahore High Court] = 2005 PTR 156 (H.C Lah.) = (2006) 93 TAX 394 (H.C. Lah.)**

The honourable High Court accepted the writ petitions and ordered the National Saving Directorate not to deduct tax on profit paid/payable on Regular Income Certificates in view of section 239(14) of the Income Tax Ordinance, 2001.

(xxiv) **2006 PTR 162 (Trib.)= [2006] 94 TAX 130 (Trib.)=2006 PTD 2784**

The ITAT has referred only one question to High Court relating to interpretation of expression "or" used in clause (3), Part IV of the Second Schedule to the Income Tax Ordinance, 1979 as disjunctive or otherwise. All other questions have been rejected. On the issue of bad debts the plea of the Department for larger bench has been rejected in the light of decision in the case of Prime Bank [2006 PTD (Trib.) 1292] that judicial propriety demands that when a matter is pending before a High Court, the lower forums should not pre-empt the jurisdiction by passing a contrary order. After making a detailed discussion on the issue, the judgements passed in the case of Bank of Punjab (2005) 92 TAX 162 (Trib.) and Standard Chartered Bank [ITA No.s 2328 and 2623/KB of 1992-93 dated 16-6-2000(unreported)] have been declared per incuriam.

(xxv) **(2007) 95 TAX 60 (Trib.) = 2006 PTR 187 (Trib.)**

Appearing as *amicus curiae* arguments relating to controversy of issuance of notices under section 114(4) of the new Income Tax Ordinance, 2001 in respect of assessment year(s) falling under the repealed Income Tax Ordinance 1979 were submitted. The full bench agreed with my view that liabilities once created do not lapse with the repeal of new law unless a different intention is expressed by the legislature and that issuance of notice under the new law for earlier assessment years was covered in the saving clause [section 239] and section 6 of the General Clauses Act of 1897. In the light of my submissions, the Full Bench disapproved its earlier contrary judgment, 2005 PTD (Trib.) 490.

(xxvi) **2007 PTD 1055 = (2007) 95 TAX 107 (Trib.) = 2007 PTR 1 (Trib.)**

The Income Tax Appellate Tribunal accepted all the points raised, the most significant is that medical reimbursement should not be treated as perquisite for the purpose of calculating inadmissible expense under section 24(i) of the repealed Income Tax Ordinance, 1979. The other

important issue decided is that for financial institutions, loss on investment of securities can be set off against other business income.

(xxvii) **(2007) 95 TAX 219 (Trib.) = 2007 PTR 42 (Trib.)= 2007 PTD (Trib.) 1986**

The Income Tax Appellate Tribunal decided all the appeals in favour holding that sale of land after developing the same into plots, with a view to maximise capital gain to discharge financial liabilities, does not constitute adventure in the nature of trade, especially when the intention of the company at the time of purchasing the land was not to earn speculative profits.

(xxviii) **2007 PTR 279 (Trib.)**

The Income Tax Appellate Tribunal, while holding that Additional Commissioner exercising delegated powers u/s 210(1A) can amend order u/s 122(5A), which was passed u/s 120(1), observed that section 209 was not on the statute books when section 122 and 210 were enacted. Factually, all the three sections were substituted through Finance Act, 2002 and therefore the observation arises from misreading of law.

(xxix) **2008 PTR 30 (Trib.)**

The Income Tax Appellate Tribunal allowed appeals from assessment years 1995-96 to 1997-98 by taking strong exception to the transgression of powers by the Taxation Officer for not following the appellate directions while re-assessing the income. Since the officer at the time of re-framing assessment adjudicated new issues, the ITAT endorsed the argument that such powers were not available to him as remand was qualified and he had to act within the directions given by the Tribunal. The learned ITAT while disapproving the act of Department held that "the matter which never became the subject matter of litigation in earlier proceedings cannot be taken up after remand with specific directions on specific points so such an act of the assessing officer being illegal is reversed. The judgements as cited by the learned AR are on all fours applicable to the issues before us and by duly following the same, the opening of new issues cannot be permitted".

(xxx) **2008 PTR 71 (Trib.)**

The ITAT while elaborating the explicit provision [section 34(2)] of the Income Tax Ordinance, 2001 held that income from government securities could only be taxed when right to receive is established on the date of maturity. The ITAT concluded that "**the provisions of section 34(2) are manifestly clear that in the case of a person offering income on accrual basis, it is date on which person becomes entitled to receive the income,**

which is material....we feel no hesitation in holding that the assessing officer grossly erred in taxing the amount when it had not become due to the recipient company". The Sindh High Court at Karachi has also endorsed this legal position under section 17 of the repealed Income Tax Ordinance, 1979 in re *Habib Bank Limited* v *Commissioner of Income Tax* (ITA N0. 882 of 1999 order dated 20-11-2008) holding that "**...interest on time bound securities, which is not payable before fixed dates,** accrue **on the** date it becomes due and receivable."

(xxxi) ***Habib Bank Ltd*** **v Commissioner of Income, Karachi 2009 PTR 1 (High Court Karachi) = 2009 PTD 443= (2009) 99 Tax 326 [Karachi High Court]**

The Sindh High Court at Karachi has accepted the plea of the bank that interest from time-bound government securities, even under mercantile system of accounting, could only be taxed when "right to receive" is established on the date of maturity though income is being recorded in the books of account on due basis. The connotation of word "receivable" in section 17 of the repealed Income Tax ordinance, 1979 mean when right to receive is established and not when the amount is merely due before the date of maturity. The Court also accepted the claim of exemption of WAPDA bonds issued with the promise being exempt in terms of section 17(2)(a) notwithstanding any conflicting exemption clauses inserted in the law afterwards

(xxxii) **2010 PTD (Trib.) 1121**

The Tribunal accepted the plea that scope of section 221 cannot be extended to issues that require adjudication through a process of arguments and counter arguments. For resolution of debatable issues, section 221 cannot be invoked.

(xxxiii) ***Uch Power (Pvt) Ltd and others*** **v** ***Income Tax Appellate Tribunal and others*** **2010 SCMR 1236 = 2010 PTD 1809**

The Supreme Court while confirming earlier decision [2004 SMCR 1319] to the extent that interest income from bank accounts is not exempt and chargeable under the head "income from other sources" held in Para 15 that losses and expenses would be adjustable against the said income. The departmental appeals on this point held to be devoid of merit, hence, dismissed and leave refused.

(xxxiv) **2011 PTD 705= (2010) 102 TAX 554 (Trib)**

The Tribunal declared the order passed by the Additional Commissioner under section 122(5A) of the Income Tax Ordinance, 2001 as void ab initio on the ground that show cause notice was issued on a different ground and order was passed on another. The deviation by the Additional Commissioner in passing order from the ground mentioned in the show cause notice is held to be violative of law laid down by Supreme Court in 1987 SCMR 1840. It is categorically held by Supreme Court in this case that "...the order of the

adjudication based on a ground which was not mentioned in the show cause notice; the order was palpably illegal and void on the face of it". The Tribunal held that department by issuing different notices—every time changing its stance—conceded that proceeding under section 122(5A) were untenable under the law as held in 2008 PTD (Trib.) 1491 that this section could not be invoked by resorting to fishing inquiries. The Tribunal also disapproved action under section 122(5A) by the Additional Commissioner as the original order was passed by the Commissioner. It specifically referred to the judgement of Supreme Court in *CIT v Eli Lilly Pakistan (Pvt) Limited and Other* (2009) 100 TAX 81 (S.C. Pak) that proceedings under section 122(5A) are revisional in nature. The Tribunal relying *Sandal Engineering (Pvt) Limited v IAC* (2001) 83 TAX (H.C. Lah) held that "according to established law revisional jurisdiction cannot be exercised by the same person let alone by a subordinate". The order is also disapproved on another ground as Commissioner did not apply his independent mind in this case which is a prerequisite under section 122(5A) of the Income Tax Ordinance, 2001. The Tribunal held that the words "consideration by the Commissioner" in section 122(5A) cast legal obligation on him. Since legislature has imposed a personal obligation on an authority by name, he is required to discharge it himself. The functions and powers can be delegated but legal obligation cannot be assigned to any other authority by the Commissioner. The Tribunal, while relying on the judgement of Supreme Court of Pakistan in *Messers Gadoon Textile Mills and 814 Other v WAPDA and Others* 1997 SCMR 641 wherein at page 799 [para 40] it is held that "where a statute directs that certain acts shall be done by a specified person; their performance by another person is impliedly prohibited", declared the order unsustainable in law.

(xxxv) ***Lone Cold Storage, Lahore* v *Revenue Officers, Lahore Electric Power Co and others*** **2010 PTR 16 [H.C. Lah.] = 2010 PTD 2502 [Lahore High Court] = (2011) 103 TAX 5 (H.C. Lah)**

I appeared as amicus curie in this case and assisted the High Court, Lahore. The Court in Para 50 acknowledged the assistance observing, "*This Court is indebted to the valuable assistance rendered by the amicii curiae.....their rich contribution is acknowledged.*" The High Court adopted my line of argument that section 235 of the Income Tax Ordinance, 2001 can be read down to resolve the conflict. The senior counsel of Tax Department, Mr. Muhammad Ilyas Khan, Supported my arguments that under section 159(1) of the Income Tax Ordinance, 2001 read with Rule 40 of the Income Tax Rules 2002, a nil tax certificate can be obtained. The High Court, while repelling the argument of the Tax Department that advance tax paid under section 235 would be refunded at the end of tax year, held that "Why should a taxpayer or a citizen of this country part with his property or be deprived of holding property unless law creates such a liability"? On my plea that law should be harmonised rather than destroyed, the Court agreed and

concluded that "applying the purposive approach, the intention of the legislature does not appear to authorize or sanction continuous charge of advance tax under section 235, once it is paid under section 147, for any such interpretation would render the scheme of advance tax under section 147 meaningless, hollow and otiose". It is held by the Court that "once the nil rate certificates is issued under section 235, the chargeability of section remains intact but the rate of tax is reduced resulting in reading down section 235 and making it ineffective, when the advance tax is fully paid". Nil rate certificate does not offend section 235(3) of the Ordinance and can easily be co-exist with the same. This reconciles both the provisions and there is no need to declare section 235 unconstitutional. The Court also directed the Federal Board of Revenue (FBR) to issue appropriate notification under section 159(3) in the larger interest of good and effective tax governance in the country. FBR implemented the instructions of Lahore High Court and issued notification SRO 1053(I)/2010 dated 22-11-2010 dated to give relief to taxpayers.

(xxxvi) ***ABN AMRO Bank (Royal Bank of Scotland)*** **v** ***Taxation Officer III, Audit Division, Large Taxpayers Unit, Karachi and others*** **2011 PTD 438 [Sindh High Court]**

The High Court decided the matter in favour of the Department and against the taxpayer holding that branches of the non-resident bank are taxable in respect of mark-up earned from Head Office under section 105 of the Income Tax Ordinance, 2001. Rejecting the claim of application of principle of mutuality, it is held that branches can claim as expense any mark-up paid to Head Office as well.

(xxxvii) ***Commissioner of Income Tax, Lahore and Chairman FBR, Islamabad and Others*** **v** ***Messer Prosperity Weaving Mills (Pvt) Ltd and others*** **2011 SCMR 177 = 2011 PTD 159=(2011) 103 TAX 1 (S.C. Pak)**

The apex Court, while rejecting the appeals of the Tax Department and National Saving Centre, maintained the order of Lahore High Court. I represented the taxpayers at Lahore High Court as well as in Supreme Court. The Supreme Court held that "when the exemption is available to the investments of National Saving Schemes under the express provision of law which have been aptly relied upon by the High Court, such exemption cannot be snatched, withdrawn or taken away by a sub-legislative instrument of the Federal Government, which may even have been issued in the garb of interpreting the provisions of any law, resultantly, no valid plea for non-exemption can be structured by the appellant (revenue) on the basis of Notification".

(xxxviii) ***A P Moller through agent*** **v** ***Taxation Officer and another*** **2011 PTD 1460 = [(2011) 104 TAX 78 (H.C. Kar.)]**

The High Court while examining section 7(1)(b) of the Income Tax Ordinance 2001 and provisions of Pak-Danish and Pak-French Double Taxation Agreements has decided the matter in favour of the Department and against the taxpayer holding that non-resident shipping companies are liable to tax for inward cargo booked on FOB basis as well as cargo booked from Pakistan. The matter is decided against Department as far as Pak-Japan Double Taxation Agreement as shipping business falls under Article 7 and there is no separate Article for shipping.

(xxxix) **2011 PTR 165 [Trib]= 2012 PTD (Trib) 1139=2012 106 Tax 269 (Trib.)**

This five-member bench (with one member's dissenting note) eventually resolved the issue pertaining to provision and write-off of bad debts by banks and financial institutions, for which money is actually stock-in-trade. The Bench after examining the provisions in the 1922 Act, 1979 Ordinance and Income Tax Ordinance, 2001 held that "conditions laid down for allowability of bad debt as deduction in the case of banks and other money-lending institutions are the same as envisaged in section 10(2)(xi) of Income Tax Act, 1922 and section 23(1)(x) of Income Tax Ordinance, 1979." The Bench, while endorsing its earlier judgment reported as (2006) 94 Tax 130 (Trib.) in which all earlier judgements were discussed in details, overruled contrary judgements in the cases of Standard Chartered Bank Ltd (ITA No.1302 to 1304, 1595 to 1598/KB/2003 and ITA No.131/KB/2005 dated 14.01.2009), Jahangir Siddiqui Investment Bank Ltd (ITA No.861 & 862/KB/2009 dated 02.06.2010 and Bank Al-Falah Ltd (ITA No.502 to 506/KB of 2009 dated 01.07.2010) based on decision of ITA No. 565 of 2000 by the Sindh High Court. The Bench noted that facts of the said case was distinguishable and that Sindh High Court reiterated the correct position of law in a subsequent in ITRA 219 of 2008 re *CIT v Security Leasing Corporation Ltd.*

(xl) **2011 PTR 222 [Trib] = 2012 PTD (Trib) 1055**

From tax year 2009 onwards, the income tax law provides for scheduler assessment in the case of scheduled banks. Vital questions of interpretation with respect to assessment on the basis of the Seventh Schedule read with section 100A of the Income Tax Ordinance, 2001 have been answered in this judgement by the Tribunal for this first time that will have bearing on all the cases of banks. The Tribunal held that "no variance in the audited accounts of bank submitted to State Bank of Pakistan can be made. The unambiguous language of section 100A read with Rule 1 of the Seventh Schedule to the Ordinance

provides that only specified adjustments/additions mentioned in Rule 1(a) to (h) can be made. Thus, the acceptance of balance of income as per accounts was a *fait accompli* for the Tax Department. By not adhering to it, gross violation of law has been committed by the Deputy Commissioner while the Commissioner of Appeals was not correct in law to justify it".

(xli) ***A P Moller through agent*** **v** ***The Commissioner of Income Tax, Zone I, Karachi another*** **2012 PTR 1 (S.C. Pak)=2012 PTD 683 (Supreme Court)= (2012) 105 TAX 213 (S.C.Pak)**

The Supreme Court, while confirming the order of High Court reported as 2011 PTD 1460 = [(2011) 104 TAX 78 (H.C. Kar.), held that: "part one of Article 8(3) of Pak-Sweden Tax Treaty "deals with the taxability of the profits earned from the operation of ships in the contracting state in which the effective management of the enterprise is situated. Part two deals with the taxability of the profits derived from the sources within the other contracting state in accordance with the domestic law. Profits in both the cases of the contracting and the second contracting states are taxable with the only difference that in the latter case the tax rates charged shall be liable to reduction according to the schedule and the percentage stipulated in the Treaty".

(xlii) **2012 PTR 124 (Trib)=(2012) 106 TAX 317(Trib)=2013 PTD 246 [Trib.]**

The Tribunal has adjudicated appeals from assessment year 1996-97 to tax year 2010 through a consolidated order in the case of Allied Bank Limited. This comprehensive judgement settles all the contentious issues lingering on between the Tax Department and the banks since 1995. On all major legal issues, the Tribunal has allowed relief to the bank following either its own earlier judgements or verdicts of the higher courts.

(xliii) ***Sethi & Sethi Sons and others v Federation of Pakistan and others*** **2012 PTR 5 (High Court Lahore)=2012 PTD 1869**

In this case appearance was made as amicus curiae. Lahore High Court held that "In managing its day-to-day affairs a PERSON, performing functions in connection with the affairs of the Federation may often delegate its powers to its officers. Such delegation ordinarily limits the power of the officer within a specified territorial domain. In such a situation, the all encompassing countrywide territorial jurisdiction of the PERSON is localized to a specific limited territorial jurisdiction. For example, Collector of Customs, an officer of FBR, has specific territorial jurisdiction limited to a particular area, as opposed to the countrywide territorial jurisdiction enjoyed by FBR. Such an officer, therefore,

performs a localized function in connection with the affairs of the Federation in a particular area and will be considered to be performing functions within the territorial jurisdiction of the High Court within whose territorial jurisdiction the territorial jurisdiction of the Officer/PERSON falls. In the present case the Deputy Director is an Officer of the Directorate General of the Intelligence and Investigation, FBR at Karachi. As per Order dated 9-12-2010 issued by the FBR, the said Officer enjoys specific territorial jurisdiction confined to Karachi. Similarly a person having territorial jurisdiction limited to Karachi has registered the F.I.R. at Karachi. Therefore, it cannot be said that the Deputy Director or the Directorate is performing functions all over Pakistan as compared to FBR, therefore, only the High Court with corresponding territorial jurisdiction will assume jurisdiction in the matter.

It is axiomatic that any act done or proceedings taken by such an Officer/PERSON are also within the territorial jurisdiction enjoyed by the said Officer, under the law. Additionally, "act done" or "proceedings taken" are closely linked with the locale of the Officer or authority doing that act or initiating the proceedings. Hence, the location of the effect of the act or order passed against the aggrieved person or the receipt of correspondence of any proceedings initiated against the aggrieved person is immaterial. What matters is the territorial jurisdiction of the PERSON and not of the "aggrieved person." I am fortified in my reasoning by the law laid down in *Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others*, (PLD 1997 SC 334), *Messrs Ibrahim Fibres Ltd. through Secretary/Director Finance v. Federation of Pakistan through Secretary/Revenue Division and 3 others*, (PLD 2009 Karachi 154), *Sabir Din v. Government of Pakistan through Secretary, Ministry of Defence and others*, (1979 SCMR 555), *Zulfikar Ali Bhutto v. The Federation of Pakistan through the Secretary, Ministry of Interior, Government of Pakistan Islamabad and 4 others*, (PLD 1980 Karachi 113), *Sh. Abdul Sattar Lasi v. Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 6 others*, (2006 CLD 18), *Muhammad Shoaib v. Project Director, National ICT Scholarship Program, Ministry of Information Technology, Islamabad and another*, (2011 CLD 23), *Sohail Jute Mills (Pvt.) Ltd. Rawalpindi through Chairman v. Central Board of Revenue, C.B.R., Islamabad through Chairman*, (1997 CLC 574), *Amin Textile Mills (Pvt.) Ltd. v. Islamic Republic of Pakistan and 3 others*, (1988 SCMR 2389) and *A. R. Khan and Sons (Pvt.) Ltd. v. Federation of Pakistan though Secretary, Ministry of Commerce, Islamabad and 3 others*, (2010 CLD 1648). It is pointed out that Flying Kraft Paper Mills case does not disturb the reasoning of

Sandalbar Enterprises case. First, because the objection regarding territorial jurisdiction was not allowed to be raised in this case and second, the order under challenge was also of the CBR (as it then was) in addition to the Collector.

In case, where a PERSON, enjoying limited territorial jurisdiction, does an act or passes an order or initiates proceedings by locating himself outside his legally earmarked territorial jurisdiction, the High Court within whose territorial jurisdiction such an act is done or order passed or proceedings initiated will assume jurisdiction under Article 199 of the Constitution. This is being pointed out for the sake of clarity and does not apply to the facts of the present case.

It is also clarified that the above test is to be applied strictly in terms of Article 199 of the Constitution and is not dependent on section 20 of the Civil Procedure Code, 1908 which cannot be relied upon to expand or interpret the Constitution. Reliance is placed on *Sh. Abdul Sattar Lasi v. Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 6 others*, (2006 CLD 18).

In the present case, the notice/summons have been issued by the Deputy Director of the Director General, Intelligence and Investigation, FBR, Karachi. Secondly, the F.I.R. has been also registered with the said Directorate in Karachi. The said Directorate and its Officers enjoy a specific territorial jurisdiction, which is restricted to Karachi. Hence the said Officer is performing functions and has initiated proceedings (impugned Notice/Summons) outside the territorial jurisdiction of this Court.
I am of the considered view that the "dominant object" of the present petition is to challenge impugned Notice/Summons dated 27-2-2012 issued by Respondent No.5 and to seek quashment of F.I.R. No. 678 of 2011 dated 9-5-2011 registered at Karachi. For the above reasons, this Court cannot entertain both these challenges. Therefore, without commenting on the merits of the case, I hold that this petition is not maintainable before this Court and is, therefore, dismissed with no order as to costs. Similarly, for the same reasons, all the petitions mentioned in Schedule-A are also dismissed with no order as to costs. Before parting with the judgment, I acknowledge with thanks the valuable assistance rendered by the *amici curaie* and the Research Assistant at the Lahore High Court Research Centre.

The Tribunal has adjudicated appeals in the case of Soneri Bank Limited from tax year 2003 to tax year 2010 through a consolidated order. This comprehensive judgement settles all the contentious issues lingering on between the Tax Department and the banks. On all major legal issues, the Tribunal has allowed relief to the bank following either its own earlier judgements or verdicts of the higher courts.

(xlv) **(2013) 107 TAX 389 (Trib.)= 2013 PTD (Tribunal) 1335**

In the case of Fayasal Bank [earlier Prime Bank, ABN-AMRO Pakistan and RBS], the Tribunal has adjudicated appeals from tax year 2003 to tax year 2010 involving 32 issues through a consolidated order. This comprehensive judgement settles all the contentious issues lingering on between the Tax Department and the Bank. On all major legal and factual issues, the Tribunal has allowed relief to the bank following either its own earlier judgements or verdicts of the higher courts.

(xlvi) **(2013) 107 TAX 440 (Trib.)=2013 PTD (Tribunal) 1083**

In the case of Bank Al-Habib the Tribunal has adjudicated appeals in assessment year 1999-2000 & 2000-2001 and from tax year 2003 to tax year 2008 through a consolidated order. This comprehensive judgement settles all the contentious issues lingering on between the Tax Department and the Bank. On all issues, the Tribunal has allowed relief to the bank following either its own earlier judgements or verdicts of the higher courts.

BOOKS:

(i) *Pakistan: Enigma of Taxation*

Published by prestigious *Lambert Academic Publishing* in 2011, the book highlights and investigates various dilemmas faced by Pakistan in generating sufficient tax revenues. The preface of the book aptly describes it scope and importance in the following words:

> "While most of the countries around the world have established a reasonably effective and fair system of taxation and have substantially improved their tax-to-GDP ratio, Pakistan is experiencing an enigmatic situation with a fast deteriorating tax structure, unlawful delegation of legislative power to the executive, provision of legal umbrella to the unscrupulous for whitening ill-gotten money and the classic case of poor paying taxes to support the rich. Successive governments, due to bad governance and incompetence, have failed to develop not only a healthy tax system but have also lost the public trust. Instead of eagerly coming forward to impart their constitutional obligations, the citizens of this country prefer to remain oblivious from the eyes of the official predators that leave no stone unturned to make lives of the registered taxpayers as miserable as possible.
>
> Pakistan presents an interesting study for economists, tax experts and practitioners of democracy as how laws are flouted to serve a small ruling minority, for example, non collection of tax from the agriculturalists, despite laws enacted by all the four provinces. More and more stress on indirect taxes, rather than direct (share of which is now reduced to only 2% in the total revenue collection), is making the poor, poorer and the rich, richer.
>
> In a country where reforms in the tax system merely imply wasting millions of dollars on physical face-lifting rather than qualitative improvement, raising standards of competence, eliminating corruption and removing public trust deficit; undoubtedly governments are faced with plummeting revenue collection, massive tax evasion and enormous levels of tax gaps. Consequently, despite an atmosphere of apparent urban affluence, the country has become entangled in heavy internal and external debts that are steadily increasing day by day.
>
> Over the last two decades, we have been vehemently trying to highlight these crucial issues in various articles appearing regularly in many periodicals, hoping to draw the government's attention for taking concrete measures before its too late. Unfortunately, our pleas are constantly falling on deaf ears, there being no effect on policy makers to address these matters on war footing and devise adequate strategies for solving the enigma of taxation.
>
> We hope this book will catch the attention of all the stakeholders for initiation of a meaningful debate on how to salvage Pakistan from this present murky state of affairs. We have stressed in this book that tax policy cannot be viewed in isolation. It is intrinsically linked with socio-economic policy. The government in power and political parties striving to reach the corridors of power would have to practically demonstrate that taxes are meant for creating an egalitarian State and

not to make the rich, richer. Fortunately, after hectic campaign by us since 1995, civil society, media and political parties have now started discussing issues related to the tax culture and establishment of social democracy.

This book presents a judicious tax model for Pakistan. The implementation of such a model is an urgent need of the hour as the existing exploitative, rotten, regressive, ill-directed and unfair tax system is widening the existing divide between the rich and the poor. Lack of political will to tax the rich is the real dilemma faced by Pakistan—not the scarcity of resources or narrow tax base. Equity demands higher taxes from those who have higher income and wealth, but in Pakistan since 1991 all tax policies have decreased tax burden on the rich and increased its incidence on the poor. We have highlighted these and other dichotomies in detail simultaneously suggesting measures to remedy the situation.

The dire need in today's Pakistan is to reduce inequalities through a policy of redistribution of income and wealth. Our tragedy is that on the one hand we have too many taxes in the country (federal, provincial and local, although the last two only generate negligible revenue) and on the other, benefits of revenue collection are not reaching the less privileged sections of society. The influential few are the real beneficiaries of every luxury that is available. Fiscal gap and debts are increasing every year despite foreign donors' bitter prescriptions. We have tried in this book to emphasize the economic challenges faced by Pakistan and how to overcome them"

(ii) *Pakistan: Drug-trap to Debt-trap*

This work, published in June 2003, sequel to earlier work, *Pakistan: From Hash to Heroin*, traces the history of Pakistan from drug-trap debt-trap with historic analysis of factors that converted the 'Kingdom of heroin' into a powerless nuclear State. It unveils the forces that are bent upon to see Pakistan a failed State.

Dr. Citha D. Maass, *Senior Research Fellow,* (South Asian and Afghan Affairs), Stiftung Wissenschaft und Politik (SWP), German Institute for International and Security Affairs, Berlin, Germany, in her Foreword observed:

"In Pakistan, an outspoken and courageous representative of civil society has been Dr. Ikramul Haq. Twelve years ago in 1991, he had already raised his voice against a threatening phenomenon to Pakistan's national and social security in his well-researched book "Pakistan: From Hash to Heroin". Now, with even greater concern, he has meticulously documented a twin threat to Pakistan's very existence in his excellent study on the drug trap and the interrelated debt trap. His clearly stated intention and obligation as an advocate of a strong civil society is to alert his fellow countrymen against Pakistan's journey from "Kingdom of Heroin" to "Bankrupt-nuclear State". Dr. Ikramul Haq's concern, however, is not only confined to his home country Pakistan. On the one hand, he thoroughly analyses how military and civilian leaders have led their country into a crippling debt trap and which role "narco-money" has played in this disastrous power game. On the other hand, he painstakingly reveals the external factors which have facilitated and accelerated Pakistan's fall into the debt trap.

He rightly argues that Pakistan's ill-fated situation illustrates the deep problems of poor countries in general. Everyone will agree with his strong appeal that in the "global village" it is the obligation of rich countries to support the poorest ones in getting out of their debt trap."
Reviews on this book are available at:
http://66.201.122.226/weekly/books/archive/031109/books9.htm &
http://www.nation.com.pk/daily/nationplus/oct-2003/24/page5.htm

(iii) *Pakistan: From Hash to Heroin*

This is a research-oriented work and the only book in Pakistan, which comprehensively describes drug situation and its evolution in the global perspective. Already two editions have been published. Its Urdu translation was published in 1993. Translations in Japanese, Hungarian and other languages are also published. The veteran journalist, Mr. Mazhar Ali Khan, in his introduction to the book observed:

"In *Pakistan: From Hash to Heroin*, Ikramul Haq has presented the results of his prolonged labours in a simple, straight forward manner. It offers a frightening picture, more frightening because it presents the harsh truth without the garnish of rhetoric. The book should be read by every concerned citizen, by all government servants connected, directly or indirectly, with law enforcement and by decision makers at the top of the pyramid, so that national effort can be mounted to halt Pakistan's drift to total ruin."

A prominent defence studies expert, Dr. Ayesha Siddiqa Agha, made the following remarks about the work:

".... a prominent research scholar and journalist working on these issues, was of the view that the linkage between drugs proliferation and trade, and sectarian and ethnic violence in Pakistan is direct. He believes that the drug Mafia, in which he also included the Prime Minister Nawaz Sharif, was instrumental in encouraging societal tensions in order to divert attention of the law enforcement agencies from narcotics smuggling to maintaining a certain level of peace in the country. Other authors as well such as Ikram-ul-Haq have subscribed to this idea. It is a recognized fact that drug Mafia leaders in any country or region try to manipulate the system and environment to the best of their interest. They certainly have a corrupting influence over the society. Furthermore, it is in their interest to impair the society's general capability to pose threat to the Mafia's interest. This has definitely been the case in Pakistan. In addition, the profits earned from drugs are used to procure light weapons that are later utilized in terrorist activities".

(iv) *Dr. Ikram's reflections on tricky tax issues*

This book on public finance in Pakistan covers a broad range of topics relating to tax legislation, fiscal management and its impact on economic development.

(v) *Practical Handbook of Income Tax*

This is the only commentary on Income Tax Law in Pakistan that is written on teach-yourself pattern. It has been published for the last 24 years.

(vi) ***Federal Tax Laws of Pakistan***

This is a consolidated version of all the federal tax codes of Pakistan, published every year to incorporate latest amendments and is treated as textbook in all educational institution. This is co-authored by Ms. Huzaima Bukhari.

(vi) ***Provincial Tax Laws of Pakistan***

This is a consolidated version of all the provincial tax codes of Pakistan, published every year to incorporate latest amendments. This is co-authored by Ms. Huzaima Bukhari.

(vii) ***Principles of Income Tax Law with International Tax Glossary***

This book describes the fundamental principles of interpretation relating to Income Tax Law in Pakistan and contains international tax glossary. This is a joint effort with Ms. Huzaima Bukhari. It is also available on CD ROM with biannual updated CDs.

(viii) ***Wealth Tax Valuation Manual***

This is a comprehensive commentary on capital taxation in Pakistan. Co-authored with Ms. Huzaima Bukhari, the book has proved to be the most authentic source of working one's liability under capital taxes of Pakistan. It is also available on CD ROM.

(ix) ***Master Tax Guide***

This is joint effort with Ms. Huzaima Bukhari. The book, in two volumes, is compendium of law concerning Direct Taxes in Pakistan and is considered to be the best reference work on the subject.

(x) ***Complete Double Taxation Agreements***

The book, co-authored with Mrs. Huzaima Bukhari, contains complete texts of all the double taxation agreements concluded by Pakistan since 1947. This is the first ever book in Pakistan on the subject which aims at providing basic information as well as authoritative commentary that is of importance to non-residents interested in investing in Pakistan and residents who have financial interests abroad. It is also available on CD ROM.

(xi) ***Complete Sales Tax Law***

This publication is loose-leave binding explains the various facets of sales tax in Pakistan. It gives existing position of law as well as legislative history. A regular updating service is provided to keep the readers informed about latest changes.

(xii) ***Complete Supreme Court Cases on Income Tax***

This book contains all the cases of Supreme Court of Pakistan on income tax law decided since 1947. It also provides a comprehensive subject index and section-wise digest so that readers can quickly find the reference they are looking for. It

is also available on CD ROM with biannual updates so that the readers can keep themselves aware of the cases decided by apex court during the year.

(xiii) ***Income Tax Digest with Judicial Analysis***

A comprehensive Digest of cases (in three volumes) decided by Indo-Pak higher courts from 1886-2005 arranged section wise, subject-wise with judicial and explanatory notes. The co-author is Ms. Huzaima Bukhari. Cases from 2006 onwards can be seen at http://www.huzaimaikram.com.

(xiv) *Law & Practice of Income Tax*

Section-wise commentary with case law and departmental instructions covering both Income Tax Ordinance, 2001 & repeated Ordinance in loose-leaf (two volumes) with regular up-dating service in printed form and through on-line facility. The book is unique in presentation and methodology. There is no comparable commentary that presents both judicial and departmental view of the law at one place. It covers all the vital areas of law and practice of income tax in Pakistan. The book is written in a reader friendly style to facilitate both professionals and the beginners alike. The co-author is Ms. Huzaima Bukhari.

(xv) ***Law & Practice of Sales Tax***

In loose leaf, the book contains comprehensive section-wise analysis of various provisions with case law and departmental circulars/instructions etc. In two volumes, the book is backed by on-line updating facility and through printed replaceable pages. This is the first ever commentary on Sales Tax in Pakistan that is practical as well as lucid. It contains everything that one requires to understand about this vital and ever-expanding tax, especially after introduction of the VAT mode. The co-author is Ms. Huzaima Bukhari.

(xv) ***Law & Practice of Federal Excise***

In loose leaf, the book contains comprehensive section-wise analysis of various provisions with case law and departmental circulars/instructions etc. This is the first ever commentary on Federal Excise Act 20015 in Pakistan that is practical as well as lucid. It contains everything that one requires to understand about this vital federal law. This is co-authored with Huzaima Bukhari.

(xv) ***Law & Practice of Sales Tax on Services***

In loose leaf, the book contains comprehensive section-wise analysis of various provisions with case law and departmental circulars/instructions of all provincial laws levying sales tax on services. The book is backed by on-line updating facility and through printed replaceable pages. This is the first ever commentary on Sales Tax on Services in Pakistan. It contains everything that one requires to understand about this tax, especially after introduction of the same by all the four provinces in Pakistan. The co-author is Ms. Huzaima Bukhari.

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